

**REMARKS**

This Application has been reviewed in light of the Office Action mailed September 23, 2005. At the time of the Office Action, Claims 1-70 were pending in this Application. Claims 1-17, 20-36, 58-65 and 70 were rejected and Claims 18, 19, and 66-69 were objected to. Claims 37-57 were withdrawn due to an election/restriction requirement.

**Election/Restriction Requirement**

Applicants acknowledge election of claims 1-36 and 58-70 without traverse. Applicants have canceled claims 37-57 without prejudice to file same in a continuation, divisional, continuation-in-part and/or co-pending application.

**Rejection of Claims Under 35 U.S.C. § 103(a)**

**Claims 1-17, 20-36, 58-65, and 70 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,670,586 by Mats O. Ingemanson et al. ("Ingemanson") in view of U.S. Patent 6,707,011 by Sing-Pin Tay et al. ("Tay").**

Applicants respectfully traverse the rejections and submit that the references relied upon do not teach or suggest, individually or in combination, what is being claimed.

Ingemanson teaches using mid-infrared wavelengths of from about 5.3 micron to 9.1 micron (col. 2, lines 22-24; and col. 3, lines 38-39) for cooking food. The present invention claims the use of near-infrared wavelengths from about 1 to 3 microns as recited in amended independent claims 1 and 58. Therefore, Ingemanson teaches away from the use of near-infrared wavelengths for cooking food.

Applicants respectfully submit that Tay is non-analogous art in that one in the field of infrared ovens for cooking foods would not look to the technical field of heat annealing semiconductor silicon wafers. Tay teaches a rapid thermal processing system having an array of heat lamps that generate radiant heat for heating the surfaces of semiconductor substrates to temperatures of over 1050 degrees Centigrade. There is no teaching or suggestion in Tay for cooking food, rather Tay teaches rapidly heating (200 to 300 degrees Centigrade per second) a semiconductor integrated circuit wafer to temperatures over 1050 degrees Centigrade for annealing the wafer (col. 2, lines 12-28). Food would carbonize if subjected to the temperatures taught by Tay. For the teachings of a reference to be prior art under Section 103, there must be some basis for concluding that the reference would have been considered by one skilled in the particular art working on the pertinent problem to the invention pertains. *In re Horn*, 203 U.S.P.Q 969, 971 (C.C.P.A. 1979).

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable

expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Thus, combining the teachings of Ingemanson and Tay would not produce an infrared oven suitable for cooking foods since Tay teaches extremely high operating temperatures used for annealing silicon semiconductor wafers, and would carbonize any food subjected to such temperatures. In addition, Ingemanson does not teach or suggest using near-infrared wavelengths from about 1 to 3 microns for cooking foods.

Claims 2-17, 20, 22-36, 61-65 and 70 depend from amended independent claim 1, and contain all limitations thereof. Claims 59 and 60 depend from amended independent claim 58, and contain all limitations thereof.

#### **Allowable Claims**

**Claims 18, 19 and 66-69 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.**

Claims 18, 19, 22-36 and 66-69 depend from amended independent claim 1, and contain all limitations thereof.

All amendments are made in a good faith effort to advance the prosecution on the merits. Applicants reserve the right to subsequently take up prosecution on the claims as originally filed in this or appropriate continuation, continuation-in-part and /or divisional applications.

Applicants respectfully request that the amendments submitted herein be entered, and further request reconsideration in light of the amendments and remarks contained herein.

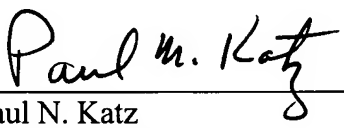
Applicants respectfully request withdrawal of all objections and rejections, and that there be an early notice of allowance.

**SUMMARY**

In light of the above amendments and remarks Applicants respectfully submit that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone or facsimile.

Applicants believe that there are no other fees due in association with the filing of this Response. However, should the Commissioner deem that any other fees are due, including any fees for a further extension of time, Applicants respectfully request that the Commissioner accept this as a Petition For Extension of Time, and direct that any and all fees due are charged to Baker Botts L.L.P. **Deposit Account No. 02-0383, Order Number 074104.0113.**

Respectfully submitted,  
BAKER BOTTS L.L.P. (023640)

By:   
Paul N. Katz  
Reg. No. 35,917  
One Shell Plaza  
910 Louisiana Street  
Houston, Texas 77002-4995  
Telephone: 713.229.1343  
Facsimile: 713.229.7743  
Email: Paul.Katz@bakerbotts.com  
ATTORNEY FOR APPLICANTS

DATE: December 20, 2005